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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1301

RICHARD L. BORDEN, ET AL.,

Petitioners,

v.

DIRECTOR, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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DIRECTOR, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered in the above-entitled case on November 26, 1973, denying a petition for a writ of certiorari to the Court of Special Appeals of Maryland.

OPINIONS BELOW

The Order of the Court of Appeals of Maryland, dated November 26, 1973, denying certiorari to the Court of Special Appeals is printed in Appendix A. The opinion of the Court

of Special Appeals of Maryland, dated October 9, 1973, is printed in Appendix A and is reported in 19 Md. App. 112, 309 A.2d 773. The opinion of the Circuit Court for Anne Arundel County which was appealed to the Court of Special Appeals of Maryland is unreported, dated June 25, 1973, and is printed in Appendix A. The opinion of the Circuit Court for Anne Arundel County on a material and relevant issue in the case, which was not appealed by either Petitioners or Respondents, is unreported, dated August 29, 1973, and is printed in Appendix A.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on November 26, 1973. This Petition is being filed within the ninety days following denial of the Petition for Writ of Certiorari to the Court of Special Appeals of Maryland. Jurisdiction is conferred on this Court by 28 U.S.C., Section 1257(3) since an equal protection claim under Section 1 of the Fourteenth Amendment to the Constitution of the United States was set up and asserted by Petitioners in their Petition of October 4, 1972, as amended January 18, 1973, filed in the Circuit Court for Anne Arundel County. Petitioners submit that they have been denied their equal Protection rights throughout the proceedings in this lawsuit.

QUESTION PRESENTED

1. Whether the denial by the State of Maryland of monetary relief to the Petitioner taxpayers who have secured a court decree to the effect that their assessments were made in violation of certain mandatory state tax statutes is a denial of equal protection to those taxpayers, in that the Maryland remedy for discriminatory assessments remits the taxpayer to an action aimed at raising all other assessments to his own level rather than, as was held by this Court in

Township of Hillsborough v. Cromwell, having the State, itself, remove the discrimination and provide an appropriate form of relief from the discrimination.

STATUTES INVOLVED

The statutes involved are the following Maryland tax statutes found in the Maryland Annotated Code:

Volume 7, Article 81, §232(8) (a) and (b);

Volume 7, Article 81, §14(b) (1);

Volume 7, Article 81, §232(4);

Volume 7, Article 81, §29A(a).

The Constitutional provisions involved are Article 15 of the Declaration of Rights of the Constitution of the State of Maryland, and Section 1 of the Fourteenth Amendment to the Constitution of the United States. The statutes and relevant constitutional sections are reprinted on pages 21a-24a, Appendix B.

STATEMENT OF THE CASE

Petitioners, as taxpayers of Anne Arundel and Talbot Counties, filed a class action Petition in the Circuit Court for Anne Arundel County, on October 4, 1972, amended January 18, 1973, against the State Department of Assessments and Taxation, the Supervisors of Assessments for Anne Arundel and Talbot Counties, Controller, Anne Arundel County, the County Council of Anne Arundel County, Treasurer of Talbot County, the County Commissioners of Talbot County, and the Comptroller of the Treasury for the State of Maryland. Petitioners alleged that the tax assessing authorities had failed to follow the mandates of Article 81, §232(8) (a) and (b) which require an annual review of all real property in every county and an annual reassessment of all property

which the review discloses has changed in value. It was also alleged that the violation of the annual review and reassessment requirement obviously meant that Article 81, §14(b)(1) which directs that all real property shall be assessed at full cash value less an allowance for inflation[1] on the date of finality[2] was in turn being violated.

Petitioners comprise a class[3] which consists of all residential property owners in Anne Arundel and Talbot Counties who were reassessed in 1971 (approximately one-third of each county) whose reassessments were reflected by the 1972-73 property tax bill, and all residential property owners who were reassessed in Anne Arundel County in 1972 (approximately another one-third of that County) whose reassessments were reflected by the 1973-74 tax bill. Petitioners, whose property was reassessed while other property in both Counties which had changed in value was not reassessed in the face of a statute demanding *annual* review and reassessment, further alleged that the assessment practices violative of Article 81, §232(8)(a) and (b) were in contravention of Article 15 of the Declaration of Rights of the Maryland Constitution and of the Fourteenth Amendment to the Constitution of the United States, in that Petitioners were forced to pay a greater proportion of taxes than others similarly situated.

Petitioners sought a declaratory judgment that the practices, in fact, violated the Maryland tax statutes, an injunc-

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[1] Currently, in Maryland, the State Department of Assessments and Taxation has set 40% as the inflationary allowance to be applied to real property.

[2] The date of finality relevant to this case is set by Article 81, §29A(a), Maryland Code, as January first of the year following the year of assessment.

[3] The issue as to whether or not the action was a valid class action was never decided by any of the courts which heard the case.

tion forbidding assessments on any other basis than that set forth in Article 81, §232(8) (a) and (b), refunds of taxes paid for fiscal 1972-73 based on the illegal assessments, and injunctive relief from the collection of taxes for 1973-74.

The case was, in effect, split into two parts. One aspect, which for simplification will be called the merits of the case, involved the question of whether or not the assessment practices violated the statute, and the other involved the relief to be accorded to the Petitioners.

In an opinion on the merits dated August 29, 1973 (see Appendix A, page 15a) the Circuit Court of Anne Arundel County ruled that the assessors did, in fact, violate the mandates of Article 81, §232(8) (b) in that property was not reassessed annually when the annual review disclosed a change in value and enjoined the State Respondents to fully discharge their obligation under that section and to submit a proposal setting forth a plan for compliance. This opinion was not appealed by the State.

However, in an opinion dated June 25, 1973, see page 12a of Appendix A, the Circuit Court ruled that regardless of any decision on the merits Petitioners were not entitled to refunds of any taxes and that Petitioners were not entitled to injunctive relief of any kind with respect to the consequences of the 1971 and 1972 reassessments, while at the same time stating, "A review of the Code and of the decisions interpreting it reveal a system as despotic as the one our forefathers fought a revolution to escape." (See Opinion, page 13a, Appendix A.)

The Court of Special Appeals, by opinion filed on October 9, 1973 (see page 1a of Appendix A), affirmed the lower court decision. The Court of Appeals then denied Petitioner's Petition for Certiorari. (See page 11a of Appendix A.)

REASONS FOR GRANTING THE PETITION

A. IT IS CLEAR THAT THE DENIAL OF MONETARY RELIEF TO THE PETITIONERS IN THIS CASE IS BASED UPON THE RULE FOLLOWED IN MARYLAND TO THE EFFECT THAT A TAXPAYER IS LIMITED TO AN ACTION AIMED AT RAISING THE ASSESSMENTS OF OTHER TAXPAYERS TO THE LEVEL OF HIS ASSESSMENT.

In denying monetary relief the Court of Special Appeals relied on *Baltimore Steam Packet Co. v. State Tax Commissioner*, 161 Md. 9, 155 A. 158 (1931); *Schley v. Lee*, 106 Md. 390, 67 A. 252 (1907), and *State Tax Commissioner v. C & P Telephone Co.*, 193 Md. 222, 66 A.2d 477 (1949).

For example, in *State Tax Comm'r v. C & P Telephone Company, supra*, the utility had appealed from an assessment of its capital stock made by the State Tax Commission. One of C & P's contentions was that other utilities were being assessed at a lower percentage of capitalized income than they were. The Court of Appeals affirmed the assessment stating:

> ". . . [I]f other utilities have been under-assessed, appellee's remedy lies not in attempting to be relieved of the assessment itself but in restraining the Commission from not properly assessing other utilities." 193 Md. at 235.

The only Maryland case in which the court held that the State itself must remove the discrimination is *Sears, Roebuck v. State Tax Commission*, 214 Md. 550, 136 A.2d 567 (1957) in which personal property assessments were invalidated for non-allowance of the inflation factor granted to real property assessments. However, in order to fall within the Sears exception in Maryland it is necessary to prove even though assessments are discriminatory, that an assessment is in excess of true cash value, i.e. that the assessment is too high, rather than that other property is intentionally assessed too

low. It is submitted that this is a highly artificial construct and that a taxpayer who proves that similar assessments are discriminatorily low should be entitled to have the State remove the discrimination.

B. THE STATE OF MARYLAND DENIES TO THE MARYLAND TAXPAYER THE FOURTEENTH AMENDMENT PROTECTION THAT THIS COURT HAS SET FORTH IN *TOWNSHIP OF HILLSBOROUGH v. CROMWELL*, 326 U.S. 620 (1946).

> "The extent to which the equal protection clause affects state property tax assessments has often been at issue before the United States Supreme Court. All states require that real property of the same class . . . be assessed equally, that is, at full value or a uniform percentage thereof . . . [T]he Court repeatedly has held that discrimination between parcels within the same class may indeed constitute a denial of equal protection. This requirement of intra class equality will prevail in any conflict with a state's provision for full-value assessment." Notes, Inequality in Property Tax Assessments: New Cures for an Old I11, 75 Harv. L. Rev. 1374 at 1375 (1962).

Thus, in *Township of Hillsborough v. Cromwell*, 326 U.S. 620 (1946) this Court grounded federal jurisdiction of a complaint of unequal assessment on a finding that New Jersey law provided no effective remedy for discrimination in that, under New Jersey law, the taxpayer was required to bring suit to raise all other assessments to the level of the taxpayer who proves discrimination.

Thus this Court declared:

> "The equal protection clause of the Fourteenth Amendment protects the individual from State action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. *The constitutional requirement, how-*

> *ever, is not satisfied if a State does not itself remove the discrimination but imposes upon him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of his class.*" 326 U.S. at 623. (Emphasis supplied.)

Two earlier Supreme Court cases are important in this regard in that they affirmed the same principle by way of petitions of certiorari to state courts.

In *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923) the court held that a taxpayer whose property had been discriminatorily assessed at full value must be granted a reduction to the fraction at which other parcels had been assessed in the face of a ruling by the Supreme Court of Nebraska that the taxpayer must sue to have other assessments raised.

> "The conclusion in these and other Federal authorities is that such a result as that reached by the supreme court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of under assessed property in the taxing district." 260 U.S. 446.

The same result was reached in *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23 (1931) on a writ of certiorari to the Supreme Court of Pennsylvania. In *Cumberland Coal* the unconstitutional discrimination was found in a procedure by which all coal in a township was assessed at the same per-ton figure regardless of differences in actual value and the court found that the discriminatory assessments were made pursuant to a deliberately adopted system. Mr. Chief Justice Hughes found that Petitioners were entitled to a downward readjustment in their assessments.

It is submitted therefore that the State of Maryland does not protect the Fourteenth Amendment rights of Petitioners

as those rights have been construed by the highest court of this land.

C. PETITIONERS HAVE ESTABLISHED THAT THEY HAVE BEEN DISCRIMINATORILY ASSESSED PURSUANT TO A DELIBERATELY ADOPTED SYSTEM BY THE STATE TAXING AUTHORITIES.

It is without question that the annual review and reassessment provisions of the Maryland taxing statutes have been the law in Maryland since 1956. However, as evidenced by the opinion of the Circuit Court of Anne Arundel County the State of Maryland as of 1973 was still not complying with the provisions of the annual reassessment plan. Therefore, lying at the heart of Petitioners' case is a systematic and long-standing violation of Article 81, §232(8)(b).

While the State of Maryland has now been directed to comply with the annual reassessment provisions of the Maryland Code and has submitted compliance proposals based on the injunction issued by the Circuit Court for Anne Arundel County by decision of August 29, 1973, nothing short of monetary relief for the Petitioners who were forced to pay a greater proportion of property taxes for 1972-73 and 1973-74 than other members of their class will cure the inequality resulting from the violation of the Maryland tax statutes that require *all* property which has changed in value to be reassessed annually. See *Perkins v. County of Albermarle* (Va.), 198 S.E.2d 626 (1973); The Maryland County Property Tax — A Need for Reform, 3 Baltimore Law Review 13 at 28-29 (1973).

CONCLUSION

For all these reasons, this petition for a writ of certiorari should be granted.

STEPHEN H. SACHS,
ELIZABETH LOGAN NILSON,
Counsel for Petitioners.

APPENDIX A
OPINIONS AND DECREES BELOW

In the Court of Special Appeals of Maryland

No. 338

September Term, 1973

Richard L. Borden, Et Al.,

v.

Director, State Department of Assessments and Taxation, Et Al.

Thompson; Powers; Menchine, JJ.

(Filed: October 9, 1973)

OPINION

MENCHINE, J.:

Some of the appellants[1] had filed a bill of complaint "on their own behalf and on behalf of all those similarly situated"

[1] Richard L. Borden and Robert E. Barba, owners of residential waterfront property in Anne Arundel County joined in the bill in their own behalf and on behalf of all owners of residential waterfront properties in Anne Arundel County with respect to the 1971 assessment;

William E. Ford and Charles A. Merson, owners of residential non-waterfront property in Anne Arundel County, joined in the bill in their own behalf and on behalf of all owners of residential non-waterfront property in Anne Arundel County with respect to the 1971 reassessment;

Lee F. Tabler, owner of residential waterfront property, and Ethel F. Hunt, owner of residential non-waterfront property in Talbot County, joined in the bill in their own behalf and on behalf of all owners of residential property in Talbot County with respect to the 1971 assessment.

seeking declaratory and injunctive relief from taxes imposed after allegedly unlawful assessments in Anne Arundel and Talbot Counties in 1971. An amended bill of complaint filed by the same and other[2] appellants sought additional relief as to taxes imposed after an allegedly unlawful assessment in Anne Arundel County in 1972. The amended bill alleged that state and county officials, departments and governments[3] failed to carry out the mandate imposed by Article 81, §232(8)(a) and (b); Article 81, §14(b)(1), and Article 81, §232(4)[4] of the Annotated Code of Maryland requiring

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[2] Edna M. Welch and J. F. Kendrick, owners of residential waterfront property in Anne Arundel County, joined in the bill in their own behalf and on behalf of all owners of residential waterfront property in Anne Arundel County with respect to the 1972 assessment;

Edward F. Sizer and Dallas W. Bauman, owners of residential non-waterfront property in Anne Arundel County, join in the bill in their own behalf and in behalf of all owners of residential non-waterfront property in Anne Arundel County with respect to the 1972 assessment.

[3] Named as defendants in the amended bill of complaint were: Albert W. Ward, Director of the State Department of Assessments and Taxation; William H. Riley, Supervisor of Assessments of the State Department of Assessments and Taxation; Linton B. Pumphrey, Supervisor of Assessments for Anne Arundel County; James S. McDaniel, Supervisor of Assessments for Talbot County; The State Department of Assessments and Taxation; Donald P. Carter, Controller, Anne Arundel County; Anne Arundel County, Maryland; The County Council of Anne Arundel County; Herman F. Mielke, Treasurer, Talbot County; The County Commissioners of Talbot County; Louis L. Goldstein, Comptroller of the Treasury.

[4] "Article 81, §232(8) *Continuing methods of assessment and review and reassessment.* — (a) To maintain and enforce a continuing method of assessment review, so that all assessable real property in every county and Baltimore City shall be reviewed at least once each year. Property shall be reviewed, in the discretion of the Director of the Department, by the use of property description cards, property location maps, land classification maps, unit value maps, land use maps, zoning maps, records of new construction, sales records, building cost data, private appraisals, or periodic surveys of assessment ratios or by the use of any other materials or information considered by the Director or the Department to be reliable aids in determining property value. In conducting this review, it shall not be necessary that properties be reviewed individually and separately; for the purpose of conducting this review, properties may be grouped

them to conduct an annual review and, where appropriate, annually to reassess all residential properties in Anne Arundel and Talbot Counties. The bill alleged that the appellant taxpayers and other taxpayers similarly situated (being about one-third of the taxpayers in each of the two years) were forced to bear a greater tax burden in the ensuing fiscal year than was the burden of other taxpayers upon the tax rolls of the two counties. The bill alleged that these 1971 and 1972 reassessments, violative of the aforementioned statutes, also were in violation of Article 15 of the Maryland Declaration of Rights and of Section 1 of the Four-

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into areas, grouped according to character or use, or grouped in any other manner which the Director or the Department considers to be necessary or helpful to the efficient conduct of said review. The Director and the Department shall have the power, at any time, to order and enforce a review of any properties, if such properties have not been reviewed within one year; and it shall be the duty of the Director to order and enforce a review of any properties upon receipt of a request to do so from the final assessing authority for the county or city in which such properties are located.

(b) To maintain and enforce a continuing method of real property reassessment, so that all assessable real property in every county and Baltimore City shall be properly reassessed annually whenever the annual review required in subparagraph (a) hereof discloses a change in value. In addition, the Director and the Department shall have the power, at any time, after consultation with the county commissioners in the several counties, or the appeal tax court where such exists, or the board of municipal and zoning appeals in Baltimore City as the case may be, to order and enforce a reassessment of any properties, if it appears, after a consideration and evaluation of the results of the annual assessment review required by subparagraph (a) hereof, that the existing assessments upon such properties are erroneous because they are significantly greater or less than the assessments on other similar properties possessing comparable values."

Article 81, §14(b)(1) "All real property directed in this article to be assessed, shall be assessed at the full cash value thereof on the date of finality. The term full cash value as used in this subsection shall mean current value less an allowance for inflation, if in fact inflation exists."

Article 81, §232(4) "*Supervision of assessments.* — To supervise the assessment of all property in the counties and cities of this State to the end that all taxable property shall be entered upon the assessment rolls and equalized between persons, firms and corporations, so that all persons, firms and corporations shall be assessed alike for like kind of property."

teenth Amendment to the Federal Constitution.[5] The bill further alleged that the appellees will continue to engage in the same improper and unlawful assessment practices in the future. The relief sought was as follows:

A. *Declaratory Relief*

(1) That appellees' assessment procedures contravene Article 81, §232(a) and (b); do not conform to the requirements of Article 81, §14; do not conform to Article 81, §232(4); and are in violation of Article 15 of the Declaration of Rights and Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(2) That the tax levies resulting from the 1971 reassessment be declared void and illegal, or, alternatively, that any increase in tax levies resulting therefrom be declared void and illegal.

(3) That the 1972 reassessment in Anne Arundel County be declared void and illegal.

B. *Injunctive Relief*

(1) Forbidding valuation and assessment of residential properties in the counties on any other basis than upon an annual review and reassessment as required by Article 81, §232(8) (a) and (b).

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[5] Article 15, Maryland Declaration of Rights

"That * * * the General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class or sub-class of land, improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; * * *."

Fourteenth Amendment, Section 1, Federal Constitution

"* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(2) Requiring execution of a continuing method of assessments to assure that all real property in Anne Arundel and Talbot Counties is reviewed once a year and reassessed annually, if such review discloses a change in value.

(3) Requiring formulation, pursuant to Article 81, §244, of a uniform plan for the assessment of property meeting the requirement of Article 81, §232(8) (a) and (b).

(4) Forbidding the collection of any property tax based on the 1971 assessment and requiring refund of any money paid by appellants or members of their respective classes, or, in the alternative, forbidding the collection of any taxes based on any increase resulting from the 1971 reassessment and requiring refund of such increase that those appellants and members of their respective classes may have paid following the 1971 reassessment.

(5) Forbidding the Supervisors of Assessments for Anne Arundel and Talbot Counties from placing the 1971 and 1972 reassessments on the tax rolls of Anne Arundel and Talbot Counties respectively.

(6) Forbidding the Supervisors of Assessments of Anne Arundel and Talbot Counties to certify the tax rolls to the County Council and the County Commissioners of Anne Arundel and Talbot Counties respectively.

(7) Forbidding the Controller of Anne Arundel County and Herman F. Mielke, Treasurer of Talbot County, as collectors of taxes, to prepare and issue tax bills for fiscal 1973-74, based upon the 1971 and 1972 assessments, or, in the alternative, forbidding them to prepare and issue tax bills to appellants and members of their respective classes for fiscal 1973-74 as to any increase resulting from the 1971 and 1972 reassessments.

The appellees Ward, Riley, Pumphrey, McDaniel and the State Department of Assessments and Taxation (allegedly responsible for the procedures utilized in the 1971 and 1972 reassessment) moved for partial summary judgment. The appellees Carter, Anne Arundel County, County Council of Anne Arundel County, Mielke, County Commissioners of Talbot County, and Goldstein (occupying roles in the col-

lection of taxes but not in the reassessment procedures) moved for complete summary judgment. The motions for summary judgment were granted by the trial court.

The granting of the requested summary judgment denied to the appellants and to the classes they purport to represent the right to:

(a) a refund of taxes paid or to any part thereof;

(b) injunctive relief against the collection of taxes based upon the 1971 and 1972 assessments;

(c) injunctive relief against the consequences of the reassessments of 1971 and 1972;

(d) injunctive relief forbidding preparation and issuance of tax bills based on the reassessments of 1971 and 1972;

(e) injunctive relief forbidding preparation and issuance of tax bills reflecting increased tax liability because of the reassessments of 1971 and 1972.

The grant of summary judgment left for further decision by the trial court the determination, upon the merits of the case, whether the assessment practices in Anne Arundel and Talbot Counties in 1971 and 1972 were in conformity with applicable substantive law. Although the decision appealed from determined less than all claims, the trial judge directed entry of a final judgment with an express determination that there was no just reason for delay, as authorized by Rule 605a. The appeal, therefore, was properly taken,[6] subject to the single caveat that the reserved issue is not before us. In the posture of the case on this appeal, we assume, without deciding, that the assessment practices were not in conformity with law.[7]

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[6] CF. *Brooks v. Ford Motor Credit Co.*, 261 Md. 278, 274 A.2d 345. Appeal from denial of injunction is authorized by Article 5, §7(c).

[7] At argument, this Court was informed that the trial judge had ruled favorably to the appellants upon the reserved issue and had ordered the remaining appellees "to fully discharge their obligations under §232(8)(b), Article 81" and had required them to submit "within 30 days a detailed description of how they propose" to do so. This appeal will, of course, in no way relate to that aspect of the case.

Appellants' Claims to Refund of Taxes

Rapley v. Montgomery County, 261 Md. 98, 274 A.2d 124, is wholly dispositive of this claim to relief. In *Rapley* it was said at page 110 [130]:

> "* * * the common law rule, as interpreted by our prior decisions, * * * precludes the recovery of taxes paid voluntarily under a mistake of law, even if paid under protest and even if the statute under which the tax was paid is later determined to be unconstitutional or invalid. The only possible escape from this harsh rule is found in the case where the taxing statute itself provides a refund; * * *."[8]

Appellants' Claims for Injunctive Relief

As heretofore stated, the appellants' claim to injunctive relief sought restraint of collection of taxes; relief from the consequences of reassessments; and restraint upon preparation and issuance of tax bills reflecting any, or any increased, tax liability. In our view all such claims will stand or fall together.

Appellants rely heavily upon *Hillsborough Township v. Cromwell*, 326 U.S. 620, wherein it was said at page 623:

> "The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. The constitutional requirement, however, is not satisfied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class."

[8] Article 81, §213 and §214 provide a statutory method for the refund of State and county taxes erroneously or mistakenly paid.

That case must be considered in the light of its extraordinary condition. The Supreme Court there points out (P. 629) that federal injunctive relief to the taxpayer was accorded because:

> "* * * *so much uncertainty surrounds* the New Jersey remedy to protect the taxpayer's federal right that a refusal to dismiss the bill was a proper exercise of discretion. Thus however the case may be viewed, *the exceptional circumstances which we have noted take it out of the* general rule of Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293." [Italics supplied]

Although the opinion in *Hillsborough* is not a model of clarity in the exposition of its facts, it is fair to conclude that the words "exceptional circumstances which we have noted" contained in the quotation immediately above made reference to the circumstances outlined in footnote 1 of the opinion, i.e.:

> "The *assessments call for tax payments of nearly $7,000,000 for each year as compared with the Township's budget of something like $97,000* annually. *Prior* to these *assessments* the net assessed valuation for taxation of all property assessed, both real and personal, in the township *amounted to $3,117,863* for 1940 and *$3,139,020* for 1941. * * * *The additional assessments* against respondent *apparently would have increased the valuation* of the township tax ratables *by $221,940,438* for each of the two years, * * *." [Italics supplied]

It is plain that the absence of State remedy coupled with proof of a purposeful discrimination of the rights of the taxpayer compelled the grant of the relief in *Hillsborough, supra.* It is equally plain that (a) no uncertainty surrounds a Maryland remedy available to the named appellants, and (b) there is no showing of a purposeful discrimination against them.

There is no contention here[9] that assessments imposed

[9] Some of the appellants had sought relief through assessment appeal procedures authorized by Article 81, §255; some had not.

upon the individual appellants exceeded full cash value as authorized and required by the provisions of Article 81, §14(b) (1). Moreover, the amended bill of complaint, (seeking relief also for the new and different one-third of the taxpayers of Anne Arundel County affected by the 1972 reassessment) necessarily implies that *all* taxpayers, including those reassessed in a prior or the ensuing year, would be entitled to the same relief. Carried to its logical end, this burgeoning effect would achieve the absurd result that *no taxpayer would be assessed in accordance with law.*

Such a result would bring chaos to the State and its political subdivisions. Balanced against the tax anarchy that would follow the grant of the relief here sought is the circumstance that *every taxpayer* (over a three year period) would have been subjected substantially to the same tax burden, (even though subjected to an added burden in the particular year of reassessment) because of benefits accruing from the absence of reassessment in the other two years.

We do not imply of course that this circumstance would operate to permit the appellees to fail or to refuse to perform a duty prescribed by law. It is plain to us, however, that the form of injunctive relief sought by the appellants in this appellate aspect of the subject litigation is not available to them.

The case of *Baltimore Steam Packet Co. v. State Tax Commission*, 161 Md. 9, 155 A. 158, compels rejection of the relief here sought. In that case the Court of Appeals said at page 22 [163]:

> "Upon a full consideration of the contentions of the appellant, it would seem that its real complaint is that it is now taxed, while competitors are exempt, resulting in a pecuniary advantage to the competitors over it to the extent of the tax which it is required to pay. If this be true, its remedy lies, not in attempting to be relieved of the tax itself, but in restraining the proper taxing officials from allowing the exemption of its competitors. Every taxpayer has a financial interest in seeing that all property in the state, properly the subject of taxation,

> should be taxed, because, by increasing the taxable basis, the rate necessary for the production of the expenses of the state and local governments will be reduced, and the individual's tax correspondingly lowered. Such a proceeding was approved by this court in *Schley v. Lee*, 106 Md. 390, 67 A. 252."

To the same effect is *State Tax Commission v. C. & P. Telephone Co.*, 193 Md. 222, 66 A.2d 477, wherein the Court said at page 235 [482]:

> "* * * if other utilities have been underassessed, appellee's remedy lies not in attempting to be relieved of the assessment itself but in restraining the Commission from not properly assessing other utilities."

The two cases last above cited make crystal clear that there is an appropriate remedy available to the appellants.

The case of *Sears, Roebuck v. State Tax Commission*, 214 Md. 550, 136 A.2d 567, cited by appellants, is distinguishable upon three grounds. First, the taxpayer there utilized the statutory relief provided by §13(a) of Article 81 of the Annotated Code (1951). Secondly, the Court of Appeals in *Sears*, itself pointed out at page 559 [572]: "* * * the appellant is not contending that any other assessment made under the direction of the Commission was too low. It is complaining that its assessment is too high. The discrimination here has been intentional and arbitrary." Thirdly, although *Sears, supra*, cited *Hillsborough, supra*, and recognized its ruling "that the State itself must remove such discrimination," it also cited and did not depart from the doctrine declared in *Schley v. Lee*, 106 Md. 390, 67 A. 252, upon which the controlling cases of *Baltimore Steam Packet* and *Commission v. C & P, both supra*, were bottomed.

Other Maryland cases cited by appellants factually are so disparate as to furnish no meaningful comparison,[10] or did

[10] *Allegany County v. Union Mining*, 61 Md. 545.
Jones v. Gordy, 169 Md. 173, 180 A. 272.
Pressman v. Barnes, 209 Md. 544, 121 A. 2d 816.

not reach the issue we find controlling in this case.[11] Out of state cases cited by appellants also have been considered, but we have found them distinguishable on their facts, or in conflict with principles declared in the decisions upon which we have relied.[12]

Because we find that none of the individual appellants is entitled to the relief denied by the trial court, we do not reach the subsidiary issue whether their claim of entitlement to bring a class action for others similarly situated is a valid one.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS. MANDATE TO ISSUE FORTHWITH.

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED by the Court of Appeals of Maryland that the said petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY,
Chief Judge.

Date: November 26, 1973.

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[11] *Hooks v. Comptroller*, 265 Md. 380, 289 A.2d 332.

[12] *Bettingole v. Springfield*, 178 N.E.2d 10 [Mass.].
Lougee v. New Mexico, 76 P.2d 6.
Miller v. Standard Nut Margarine Co., 284 U.S. 498.
Morschauser v. American News Co., 178 N.Y.S.2d 279.
Ogden City v. Armstrong, 168 U.S. 224.
Oglesby v. Chandler, 288 P. 1034.
Tumulty v. District of Columbia, 102 F.2d 254 [USCADC].

In the Circuit Court for Anne Arundel County

Equity No. 21,059

Richard L. Borden, et al.,
Plaintiffs,

v.

Albert W. Ward, et al.,
Defendants.

MEMORANDUM OF OPINION AND DECREE

In the age-old, continuing, and unequal battle between the tax collectors and the taxpayers,[1] the taxpayers mount yet another assault upon the citadels with a Bill of Complaint filed 4 October 1972, and amended 6 February 1973. They allege they pay "ordinary" taxes in Talbot and Anne Arundel Counties to both the Counties and the State of Maryland. They say that they have been required to pay more than their fair share of taxes because their property was recently re-assessed,[2] while the assessment of others was not even reviewed in violation of Sec. 232(8)(a), Art. 81, Code. That Section requires an annual review of all assessments.

Against the broad range of relief the Petitioners pray, some of the Respondents move for partial summary judgment and some for summary judgment as to: (1) any refund of taxes paid for fiscal year 1972-1973; (2) any injunctive relief against the collection of taxes for the fiscal year 1972-1973; (3) any injunctive relief against the consequences of the re-assessments of Petitioners' property in 1971 and 1972; (4) any injunctive relief forbidding the collectors to prepare

[1] To paraphrase an old Southern folk saying about black people: A taxpayer's got two chances — slim, and none at all.

[2] It seems that any re-assessment is always upwards.

and issue tax bills for fiscal year 1973-1974 based on the 1971 or 1972 assessments; (5) any injunctive relief forbidding the collectors to prepare and issue tax bills reflecting any increase in tax liability because of higher assessment in 1971 or 1972; and (6) any refund or injunctive relief for the classes the individual petitioners purport to represent.

A review of the Code and of the decisions interpreting it reveal a system as despotic as the one our forefathers fought a revolution to escape. At common law, money once in the sovereign's clutches could not be pried loose by any action in court,[3] *Rapley v. Montgomery County*, 261 Md. 98 (1971), whether paid by mistake, or under an unconstitutional law, or otherwise. Refunds of amounts wrongfully exacted are a matter of grace with the Legislature; assessments "erroneously" made include even those void because not made in accordance with the law, *Wasena Housing Corp. v. Levay*, 188 Md. 383 (1946). Citizens who believe others are not paying their fair share may sue the assessor to restrain him from continuing an illegally low assessment, *Schley v. Lee*, 106 Md. 390 (1907), *County Com'rs v. Buch*, 190 Md. 394 (1947);[4] but one public-spirited and financially able to do so can bring no sure benefits to his fellow sufferers; class actions are not allowed on appeal to the Tax Court, *Hooks v. Comptroller*, 265 Md. 380 (1972). Since refunds are a matter of grace, it follows that the Legislature can prescribe the exclusive machinery by which a citizen seeks justice, *Wasena, supra*, at page 394.[5]

The machinery the Legislature has provided as to refunds is set out in Secs. 213 and 214, Art. 81, Code. Virtually

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[3] Judge Singley's review of the law in *Rapley* prompts one to think that all of us should reflect more often upon the difference between being a subject of a sovereign, and being a citizen among a sovereign people whose government is supposed to be its servant. Nor can one be proud of an agent who is unjust.

[4] A more pernicious policy to keep a people divided and restive is difficult to conjure up.

[5] The United States Supreme Court has forced one exception not applicable here, *Sears, Roebuck v. State Tax Comm.*, 214 Md. 556 (1957), which followed *Hillsborough Township v. Cromwell*, 90 L. Ed. 358 (1946).

identical in substantive provisions (one applies to State taxes and one to County and Baltimore City taxes), they require a citizen to apply to the collector in writing. But he is wasting his time if his claim for a refund is bottomed on a claim that his assessment was erroneous or excessive[6] if the assessment is final. Assuming there was no appeal, the assessment is final on the first day of January next preceding the July in which the fiscal year begins.[7] For those Petitioners who did not appeal, as provided by the tax law,[8] the assessments have been final for some time.

As to the injunctive relief sought, *Com'rs of Alleghany County v. Union Mining Co.*, 61 Md. 545 (1884) seems to be dispositive of it, if the "exclusive" rule of *Wasena* is not. There the Court of Appeals said, at page 548:

> "It is only when the tax itself is clearly illegal, or the tribunal imposing it has clearly exceeded its powers, or the rights of the taxpayers have been violated, that the interposition of the special remedy by injunction can be successfully invoked, *and only then when no appellate tribunal has been created with power to remedy the wrong.*" (Emphasis supplied.)

The Legislature has provided an "appellate tribunal" with power to remedy the wrong. It follows that the motions must be granted.

It appearing that there is just no reason for delay, the Clerk will be directed to enter final decrees.[9]

Whereupon, it is this 25th day of June 1973, by the Circuit Court for Anne Arundel County ADJUDGED, ORDERED and DECREED:

That the Petitioners Borden, Barba, Ford, Merson, Tabler, and Hunt and the classes they purport to represent have no

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[6] The Petitioners' specific claim is that others' assessments are too low. This seems to be another way of saying their own is excessive, or "erroneous", as *Wasena* defined it.

[7] Secs. 29A(a) and 29A(b), Art. 81.

[8] Secs. 255 and 256, Art. 81.

[9] Rule 605, M.R.P.

right to a refund of any State or County taxes for fiscal year 1972-1973.

That Petitioners Borden, Barba, Ford, Merson, Tabler, and Hunt and the classes they purport to represent have no right to any injunctive relief from the collection of State and County taxes for fiscal year 1972-1973;

That none of the Petitioners and the classes they purport to represent is entitled to injunctive relief of any kind with respect to the consequences of the 1971 and 1972 re-assessments, including the preparation and issuance of tax bills for fiscal 1973-1974;

That as to Respondents Carter, Anne Arundel County, Maryland, The County Council of Anne Arundel County, Mielke, The County Commissioners of Talbot County, and Goldstein, the Bill of Cmplaint be, and it is hereby, dismissed;

That all of the above be entered as final decrees.

JAMES L. WRAY,
Judge.

MEMORANDUM OF OPINION AND DECREE

Certain aspects of this proceeding, decided on 25 June 1973, are now on appeal. The Petitioners now move for a summary judgment as to the remaining issues.

Before considering the merits, there is to be decided Carter *et al's* Motion for Stay of Proceedings Pending Appeal.[1] They first argue that the Petitioners have elected a remedy by appealing from the decrees of 25 June 1973. That does not appear to be so. Since those decrees were final, the Petitioners were compelled to appeal when they did lest they lose that right.

The movants also argue that Petitioners continue to try to represent classes when the classes are as yet not suffi-

[1] The movants' standing to make the Motion is assumed, though the Bill of Complaint was dismissed as to them.

ciently delineated. With the view this Court takes of the merits, whether the Petitioners represent classes or not is irrelevant.

Another argument is that all governmental bodies with tax levying authority in the State should be made Defendants. They cite no authority for this proposition, nor has any been found. The Petitioners do not claim to represent certain classes of taxpayers throughout the State, but only those in Anne Arundel and Talbot Counties. It would seem a dubious postulate that an Anne Arundel County taxpayer would have the standing to attack the assessment practices in a County where he owned no property and paid no taxes. Worth noting, too, is the absence of any clamor from other taxing authorities for leave to intervene herein. Besides this, the primary attack is on the assessment procedure, which is under State control.

That "the impact of the relief prayed for" may be felt by other subdivisions is no reason to delay if the Petitioners are entitled to relief.

Finally, if the Court understands them, the movants allege that this Court is without jurisdiction because certain issues are now before the Court of Special Appeals. But that can not be true of those issues that are not before the Court of Special Appeals if M.R.P. 605a means what it says.[2] The Motion will be denied.

In their Motion for Summary Judgment, supported, they say, by 278 pages of depositions, the Petitioners seek a declaratory decree that:

1. Respondents' assessment procedure for residential property in Anne Arundel and Talbot Counties has not, and, if continued, will not (a) effect a continuing method of annual review and reassessment of all properties as required by Article 81, Section 232(8)(a) and (b) and is therefore, in

[2] The Court of Appeals reminds us forcefully and frequently that all of the Rules say what they mean and mean what they say, "precise rubrics" though they may not be to some of us less gifted than the members of that Court.

contravention of the law of Maryland; (b) conform to the requirements of Article 81, Section 14 requiring that all real property shall be assessed at full cash value as of the date of finality minus an allowance for inflation; (c) conform to Article 81, Section 232(4) mandating that all persons shall be assessed alike for like kinds of property, and (d) conform to Article 15 of the Declaration of Rights and Section 1 of the Fourteenth Amendment of the Constitution of the United States.

2. The tax levies placed upon Petitioners and members of their respective classes as a result of the 1971 reassessment are void and illegal in that Petitioners and the members of their classes have been forced to pay a greater tax burden than that required and permitted by law, or, in the alternative, that any increase in tax levies as a result of the 1971 reassessment in Anne Arundel and Talbot Counties is void and illegal in that Petitioners and the members of their respective classes have been forced to pay a greater tax burden than that required and permitted by law.

3. The reassessments of Petitioners Welch, Kendrick, Sizer and Bauman (the 1972 Petitioners) and the classes they represent are void and illegal in that Petitioners and the members of their classes have been reassessed in contravention of the laws of Maryland and Section 1 of the Fourteenth Amendment to the Constitution of the United States as set forth in the Amended Petition.

The Petitioners also claim entitlement to an injunction:

(a) Forbidding Respondents Pumphrey and McDaniel to value and assess residential property located in Anne Arundel and Talbot Counties on any other basis than an annual review and reassessment as required by Article 81, Section 232(8)(a) and (b).

(b) Requiring the Respondents Director, the Chief Supervisor and the Department forthwith to execute a continuing method of assessments so that all assessable real property in Anne Arundel and Talbot Counties be thoroughly reviewed once a year and reassessed annually if such review discloses a change in value.

(c) Requiring the Respondents Director and the Department forthwith to formulate, pursuant to Article 81, Section 244, a uniform plan for the assessment of property meeting the requirements of Article 81, Section 232(8) (a) and (b).

The Declarations sought in paragraphs two and three must be denied for the reasons stated in the Memorandum of Opinion filed on 25 June 1973. The Respondents' review and reassessment procedures will be considered.

Vinton Thomas Bull, deposed on 26 March 1973, was employed as an assessor in Anne Arundel County in 1949, became the Supervisor of Assessments in 1957, and continued in that post until 31 December 1972. His office gathered information from deeds for a sales analysis, sought a regular flow of copies of building permits to keep up with new construction, and tried to keep informed about changes in zoning. In addition, his field men kept their eyes open to changes in the areas to which they were assigned. A draftsman plotted property transfers on tax maps.

A review and analysis of sales data at year's end constituted the "general review program."[3] This analysis indicated where property values were apparently rising rapidly enough to indicate a reassessment, sometimes after a physical view of the property and sometimes without one. A review of the "oldest areas"[4] led to plans to review them by a physical viewing for reassessment. All of this was subject to the limitations of never having enough manpower. While the State paid 60% of an assessor's salary, and the County 40%, the County on one recent occasion paid all of the bill of a private appraisal company to "help us get caught up."

The State Department of Assessments and Taxation could give a "go-ahead signal" to hire more men, subject to County approval. For many years, the Planning and Zoning Depart-

[3] Dep. 12 and 13.

[4] The Court understands this term to mean those areas longest without a review or physical viewing.

ment handicapped the assessment process by failing to furnish information on any regular basis.[5]

In his deposition of 9 May 1973, James Edward McDaniel, Supervisor of Assessments for Talbot County, outlined a method of proceeding similar to that described by Mr. Bull, though things are a little more catch-as-catch-can on the Eastern Shore. Some people build without building permits. Some permit offices do not furnish copies to the Assessor's office on a regular basis.[6]

The Respondents have filed an affidavit from William H. Riley, the State's Supervisor of Assessments, which says that Anne Arundel County now has five more assessors and Talbot County one more. From this, the Respondents argue that the Petitioners are entitled to no relief, there being no showing that there is any present danger that all assessments in the two Counties will not be reviewed in this year, and, where indicated, that reassessments will not be done in this year. The facts are too frail to support the weight of the argument. The affidavit says additional assessors are afforded "From time to time, *dependent on need and budgetary limitations.*" The affidavit does *not* say, whether by design or oversight, that the two Counties now have the capability to do what Section 232(8)(b) requires.

From a review of the materials submitted, it appears that the assessors are doing an acceptable job with respect to the assessment review Section 232(8)(a) requires, but are falling short of enforcing "a continuing method of real property reassessment" that Section 232(8)(b) requires.[7] The Petitioners' standing to bring the Respondents to task has already been decided, *Schley v. Lee*, 106 Md. 390 (1907); *County Com'rs v. Buch*, 190 Md. 394 (1947).

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[5] One must wonder if certain public servants need Sec. 220, Art. 81, Code, read to them as encouragement.

[6] These people, too, would seem to need the knowledge of Sec. 220.

[7] This is not to be taken to impugn in any way the Respondents' integrity. Legislative imposition of stringent standards while withholding funding adequate to meet the standards is nothing new.

Whereupon, it is this 29th day of August 1973, by the Circuit Court for Anne Arundel County, ADJUDGED, ORDERED and DECREED:

That the Motion for Stay of Proceedings Pending Appeal be, and it is hereby, denied;

That the "State Respondents" be, and they are hereby, enjoined to fully discharge their obligations under Sec. 232(8) (b) Art. 81, Code;

That the "State Respondents" submit to this Court within thirty days a detailed description of how they propose to discharge fully their obligations under Sec. 232(8) (b), Art. 81, Code.

JAMES L. WRAY,

Judge.

APPENDIX B — STATUTES

DECLARATION OF RIGHTS

Article 15. Poll taxes prohibited; paupers not to be assessed; uniformity of taxation.

That the levying of taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class or sub-class of land, improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community. (1890, ch. 242, rejected Nov. 3, 1891; 1914, ch. 390, ratified Nov. 2, 1915; 1937, ch. 525, rejected Nov. 8, 1938; 1960, ch. 64, ratified Nov. 8, 1960.)

CONSTITUTION

AMENDMENT XIV. — CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE 81

* * * * * *

§ 14. Classification of property; value at which assessed; annual assessment of personal property; real property assessments continuing.

(b) *Valuation.* — Except as hereinafter provided:

(1) All real property directed in this article to be assessed, shall be assessed at the full cash value thereof on the date of finality. The term full cash value as used in this subsection shall mean current value less an allowance for inflation, if in fact inflation exists.

* * * * * *

§ 29A. Dates specified.

(a) *Date of finality; semiannual date of finality; quarterly date of finality.* — From and after December 31, 1965, for the State and every county, incorporated city or town, and taxing district the date of finality is January 1; and the semiannual date of finality is July 1. Montgomery County, Howard County and any incorporated city or town may provide for a quarterly date of finality for the purposes of § 50(c) of this article and that quarterly date of finality is October 1.

* * * * * *

§ 232. Jurisdiction, powers and duties.

The jurisdiction, supervision, powers and duties of the Department herein created, and the Director thereof, shall extend under this article:

* * * * * *

(4) *Supervision of assessments.* — To supervise the assessment of all property in the counties and cities of this State to the end that all taxable property shall be entered upon the assessment rolls and equalized between persons, firms and

corporations, so that all persons, firms and corporations shall be assessed alike for like kind of property.

* * * * * *

(8) *Continuing methods of assessment and review and reassessment.* — (a) To maintain and enforce a continuing method of assessment review, so that all assessable real property in every county and Baltimore City shall be reviewed at least once each year. Property shall be reviewed, in the discretion of the Director of the Department, by the use of property description cards, property location maps, land classification maps, unit value maps, land use maps, zoning maps, records of new construction, sales records, building cost data, private appraisals, or periodic surveys of assessment ratios or by the use of any other materials or information considered by the Director or the Department to be reliable aids in determining property value. In conducting this review, it shall not be necessary that properties be reviewed individually and separately; for the purpose of conducting this review, properties may be grouped into areas, grouped according to character or use, or grouped in any other manner which the Director or the Department considers to be necessary or helpful to the efficient conduct of said review. The Director and the Department shall have the power, at any time, to order and enforce a review of any properties, if such properties have not been reviewed within one year; and it shall be the duty of the Director to order and enforce a review of any properties upon receipt of a request to do so from the final assessing authority for the county or city in which such properties are located.

(b) To maintain and enforce a continuing method of real property reassessment, so that all assessable real property in every county and Baltimore City shall be properly reassessed annually whenever the annual review required in subparagraph (a) hereof discloses a change in value. In addition, the Director and the Department shall have the power, at any time, after consultation with the county commissioners in the several counties, or the appeal tax court where such exists, or the board of municipal and zoning appeals in Baltimore City as the case may be, to order and

enforce a reassessment of any properties, if it appears, after a consideration and evaluation of the results of the annual assessment review required by subparagraph (a) hereof, that the existing assessments upon such properties are erroneous because they are significantly greater or less than the assessments on other similar properties possessing comparable values.

* * * * * *

28 U.S.C.

§ 1257. State courts; appeal; certiorari.

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

* * * * * *